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May 11, 2015

**VIA REGISTERED MAIL**  
**Return receipt requested**

Mike Olmos, City Manager  
425 E. Oak Avenue  
Visalia, CA 93291

**Re: Coppola v. Smith et al., E.D. of CA, Fresno Division, Case No. 1:11-CV-01257**  
**Notice of Intent to Bring Action Under the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, to Effect the Cleanup of Hazardous Waste at and Near 717 West Main Street in Visalia, California**

Dear Mr. Olmos,

Prior to bringing a claim under the Federal Resource Conservation and Recovery Act ("RCRA"), for the City of Visalia's (the "City") contribution to an imminent and substantial endangerment to human health and the environment, a private citizen is required to provide minimum notice to the alleged contributor, the Administrator of the solid waste management agency for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency ("EPA"), and the Regional Administrator of the EPA for the region in which the violation is alleged to have occurred. (42 U.S.C. § 6972 and 40 CFR § 254.2). The claimant must provide ninety (90) days notice prior to bringing the RCRA action.

On behalf of the Viola M. Coppola Irrevocable Trust, Gary Coppola, and the Trust of Anthony M. Coppola (collectively as "Coppola"), our clients, we are providing the requisite statutory notification of the City's continuing RCRA violations and the City's contribution to an imminent and substantial endangerment resulting from the City's ownership and operation of its municipal sewers.

Coppola is providing this statutory notice to the City, the Administrator of the solid waste management agency for the state of California, the Administrator of the EPA, and the applicable Regional Administrator of the EPA.

Coppola seeks a clean-up order, declaratory relief, related damages and costs of suit (including attorneys and expert witness fees), as a result of the City's failure to prevent leakage of hazardous substances from its sewer lines near 717 West Main Street in the city of Visalia, Tulare County, California (the "Coppola Property"). In addition, this action will seek an order for the City to undertake all of the investigation, studies, monitoring, and

response actions necessary to respond to, abate, and remediate, fully and promptly, the hazardous waste contamination emanating from the City's sewer system near the Coppola Property.

## **I. The Contamination at Issue**

Coppola owns the Coppola Property, upon which they have operated a dry cleaning business at relevant times.

On September 8, 2006, California's Department of Toxic Substances Control ("DTSC") issued an Imminent and Substantial Endangerment Order ("DTSC IS&E Order") for the groundwater contamination in Visalia. On October 28, 2009, the DTSC requested that Coppola enter into a Consent Order to allow the DTSC to enter onto and investigate the occurrence of tetrachloroethylene ("PCE"), a hazardous substance, in the soil, soil gas, and/or groundwater at and near the Coppola Property.

Coppola subsequently signed the DTSC Consent Order in July 2011, formally consenting to conduct the DTSC required investigation. The DTSC Consent Order also sets forth the DTSC's regulatory and statutory authority to oversee the investigation and cleanup of the contamination at issue, as well as mandate deadlines, procedures, and issue fines for violations thereof. The City has not signed the DTSC Consent Order, nor is it under requirement or mandate from any other regulatory agency to investigate and/or cleanup the contamination at issue.

Pursuant to the requirements of the DTSC Consent Order, Coppola implemented and continues to conduct an extensive environmental investigation into the occurrence of PCE and related contaminants at and near the Coppola Property. In doing so, Coppola gathered information and data supporting an allocation of liability for the contamination at issue to be placed upon nearby current and former property and business owners, groundwater supply well operators, and the City.

Coppola, therefore, has asserted claims against these entities, individuals, municipalities, and utility companies arising out of the Federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), California's Superfund, and/or California common law.

Coppola's continued investigation has been met with multiple administrative and uncontrollable delays from outside sources such as the DTSC, EPA, and/or the City itself. Nevertheless, Coppola has recently gathered and developed information and data supporting a RCRA claim against the City, for which it now gives the requisite, statutory notice.

## **II. RCRA**

RCRA is a federal statutory scheme that "establishes a program for the management of hazardous waste from its origin to its ultimate disposal (so-called "cradle to grave" regulation) to ensure that the means of disposal of hazardous waste will prevent escape of those wastes into the environment, and provides an enforcement mechanism to ensure



compliance with that program." (*Westfarm Assocs. Ltd. Partnership v. International Fabricare Inst.*, 846 F. Supp. 422, 434 (1993)).

Key differences between RCRA and CERCLA include, but are not limited to, the specific remedies RCRA affords. Specifically, RCRA gives rise to injunctive relief as well as an award of attorneys' fees, whereas CERCLA provides a private party a mechanism to recover past costs, contribution, and indemnity.

To establish a claim for injunctive relief under RCRA, "a plaintiff is required under § 6972(a)(1)(B) to demonstrate: (1) that the defendant is a person, including, but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facility; (2) that the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and (3) that the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment." (*Cox v. City of Dallas*, 256 F.3d 281, 293 (2001); *see also* 42 U.S.C. 6972).

A private citizen may bring a RCRA claim "against any person, *including the United States and any other governmental instrumentality or agency...* [that is a] past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility." [Emphasis added] (42 U.S.C.S. § 6972). This has been read extensively by the courts to effectuate the broad-sweeping legislative intent of holding contaminating parties accountable.

### **III. The City's RCRA Violations and Contribution to the Contamination at Issue**

The City, at all relevant times, has owned, operated, supervised, controlled, and been obligated to adequately maintain the sewer system that services the Coppola Property as well as nearby properties and businesses. From at least 1965 to present, the sewer system has transported several types of solid and hazardous waste, including but not limited to PCE. The City was obligated to maintain its sewer system in such a manner that would preclude exfiltration of hazardous substances, including PCE, into the surrounding soil, soil gas, and groundwater.

However, the City's failure to adequately maintain, repair, and/or replace its sewer system has resulted in cracks, leaks, sags, and defective joints, among other defects which allow exfiltration of sewage, including PCE and other contaminants. As a result, the City has exacerbated the contamination plume at issue by causing it to spread to previously uncontaminated areas.

The United States EPA defines a facility as "[a]ll contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units." (40 C.F.R. § 260.10.)

"[T]he term 'facility' has been broadly construed by the courts, such that 'in order to show that an area is a 'facility,' the plaintiff need only show that a hazardous substance under CERCLA is placed there or has otherwise come to be located there.'" (*Stevens Creek Assocs. v. Barclays Bank* (1990) 915 F.2d 1355, 1360). The EPA has statutorily codified PCE as a hazardous substance. (40 CFR 261.31).

California's Eastern District has held that City owned municipal sewer systems qualify as facilities. (*Adobe Lumber, Inc. v. Hellman*, 658 F. Supp. 2d 1188, 1202 (E.D. Cal. 2009)). The Court also held that "there does not appear to be a limit to the number of 'facilities' that can be created by the migration of hazardous substances, even if hazardous substances 'come to be located' at several locations in a particular case." (*Id.*).

The City's ownership, unilateral control, and operation of the City's sewer system at all relevant times qualifies it as an owner and operator of a treatment, storage, and disposal facility within the meaning of RCRA, in which hazardous substances are knowingly transported, stored, and disposed.

Further, the EPA defines a generator as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation." (40 C.F.R. 260.10). The City's defective sewer system has caused PCE contamination to be introduced to previously uncontaminated areas of the surrounding environment, qualifying the City as a generator of hazardous waste.

Thus, Coppola meets RCRA's first prerequisite to assert a RCRA claim against the City and will make the showing that the City is a transporter and generator of hazardous waste as well as an owner and operator of a hazardous waste treatment, storage, and disposal facility.

The City has and continues to contribute to the contamination at issue through its failure to adequately construct, operate, maintain, inspect, clean, repair, and/or replace its sewer system. This has resulted in breaks, cracks, leaks, and defective joints, among other defects. The City's subpar operation of its sewer system has caused the release and exfiltration of PCE, along with other constituents, since at least the late 1960s, and at all times relevant to this litigation.

The PCE released and disposed from the City's sewer system has and continues to migrate downgradient into previously uncontaminated areas including the surrounding soil, soil gas, and groundwater at and near the Coppola Property, exacerbating the contamination plume at issue which the DTSC Consent Order requires Coppola to investigate and abate.

Coppola first learned of the City's contribution to the contamination at issue and exacerbation thereof in 2012 through a data collection series of closed circuit television ("CCTV") inspections. Analyses of the then available data and CCTV inspections yield a supporting bases for Coppola to assert a CERCLA claim against the City.



Although the DTSC had also previously issued a broad IS&E Order pertaining to groundwater in Visalia, Coppola was not confident in 2012 that it had the requisite supporting data to meet federal pleading standard requirements with respect to an imminent and substantial endangerment attributable to the City, which is RCRA's third element.

However, Coppola has developed the requisite information and data through a series of progressive, environmental investigations in compliance with the DTSC Consent Order. Coppola's efforts in doing so seek to fully delineate the contamination plume at issue by determining the vertical and lateral extent as well as the sources of contamination.

Recently developed data and ongoing analyses thereof confirms that the City's subpar construction, operation, maintenance, and failures to repair, replace, and inspect its sewer system is causing PCE and related constituents to discharge and release from the City's sewer system, and subsequently migrate into the surrounding soil gas at and near the Coppola Property. The hazardous nature of PCE and related constituents in the soil gas at, below, and near both business and residential structures presents an imminent threat to human health because the soil gas vapors have the propensity to migrate to the indoor air of these structures where they can be inhaled at levels posing a threat to human health.

Additionally, data confirms that the scope and extent of PCE contamination near the Coppola Property in the soil and groundwater is attributable to the City's defective sewer system, which poses an imminent threat to the surrounding environment.

At all relevant times, the City has been in sufficient control of its sewer system to not only be aware of the reasonably foreseeable risk that their defective condition pose to the surrounding environment and human health, but was also the only entity in a position to prevent this occurrence. Thus, the City's failure to take action to prevent the exacerbation of contamination that it knew or should have known about violates RCRA by continuing to contribute to the imminent and substantial endangerment. The City is, therefore, liable under RCRA. Conditions will continue to worsen until the City takes actions to fix its sewers and remove the contaminants. Until the City repairs and operates its sewers in a safe manner, contaminants will continue to escape into soil, soil gas, and the groundwater.

#### **IV. Conclusion**

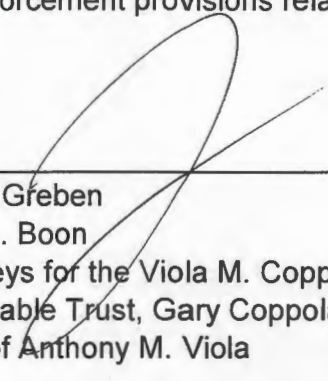
This notice sufficiently complies with both the RCRA and EPA notice requirements, and will be sent to all appropriate and necessary agencies. This notice specifies Coppola's bases to properly assert a RCRA claim against the City, and both the ongoing environmental investigation as well as discovery to be conducted will further support and confirm Coppola's position.

Coppola will seek injunctive relief as available under RCRA to hold the City liable for its contribution to the contamination at issue by Court Order to undertake investigation and/or cleanup efforts on its own accord. Coppola will also seek attorney fees under RCRA.

During RCRA's statutory 90-day notice period, Coppola is willing to engage in good faith discussions with the City pertaining to potentially effective investigation and remedial

strategies. To the extent these prove ineffective, Coppola will seek leave from the Court to assert a RCRA claim against the City upon expiration of the 90-day notice period.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA evidence by information which becomes available to Coppola after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violation.



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Trust of Anthony M. Viola

All communications regarding this matter should be addressed to:

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**CC by Registered Mail**

Gina McCarthy, Administrator of the EPA  
Jared Blumenfeld, Regional Administrator of EPA, Region 9  
Caroll Mortensen, Director/Administrator of the CA solid waste management agency

**CC by U.S. Mail**

Leonard C. Herr, Counsel for the City of Visalia